

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**FAO No.3768 of 2014 (O&M)
Date of Decision: 31.03.2015**

New India Assurance Company Ltd.Appellant
Versus
Meeta Devi and othersRespondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. D.K.Prajapati, Advocate for
Mr. R.S.Madan, Advocate,
for appellant.

Mr. Sagar Aggarwal, Advocate,
for respondents No.5 and 6.

SHEKHER DHAWAN, J

Appellant-Insurance company has challenged the award dated 11.02.2014 by Motor Accident Claims Tribunal, Kaithal (hereinafter referred as 'The Tribunal') whereby 'The Tribunal' has awarded compensation of ₹7,17,200/- on account of compensation to the claimants on account of death of Satbir Singh.

2. Brief facts relevant for the purpose of decision of the present appeal that on 20.03.2012 motor vehicle accident took place involving tractor trolley bearing registration No.HR-08G-8070. It is stated that Satbir Singh (since deceased) was travelling in the said tractor trolley and he was sitting in the trolley. At 4.45. p.m. when they reached near Prakash Bhatha Karnal road, one gypsy came from Kaithal side and same was being driven in a rash and negligent manner and hit against the trolley. Resultantly the

tractor trolley turned turtle and Satbir Singh died on the spot. The matter was reported to the police by Dharambir. Satbir Singh was agriculturist by profession.

3. Respondents contested the claim petition thereby taking the plea that Satbir Singh might have sustained injury in the accident because of his own fault. False FIR was got recorded. Appellant-Insurance company took the plea and the driver of the tractor trolley was not having valid driving licence and the tractor trolley without observing the rules and regulations and prayed that claim petition be dismissed.

4. 'The Tribunal' awarded the compensation to the tune of ₹7,17,200/- thereby returning the findings that liability to pay the amount of compensation shall be of the driver and owner as well as the Insurance company. Appellant-insurance company is in appeal before this Court.

5. Mr. D.K.Prajapati, Advocate learned counsel for the appellant-insurance company took the plea that 'The Tribunal' fell in error while appreciating the evidence led by claimants. It had come in the statement of Dharambir (PW-2) and Kuldeep (PW-5) that they were not present at the time of accident rather they reached on the spot after the accident had already taken place. As such, they had not seen the accident and there was no material evidence available with 'The Tribunal' to return the findings that accident had taken place because of the rash and negligent driving of respondent No.1 and as such the claim petition is liable to be dismissed.

6. While arguing further, learned counsel for the appellant-insurance company raised the contention that 'The Tribunal' did not take into consideration the fact that the vehicle was being plied in violation of terms and conditions of the Insurance Policy. It is admitted case even from

claimant side that the driver had attached the trolley with the gypsy and the said trolley was never insured with the Insurance Company and no premium was paid and the vehicle was being driven in violation of the terms and conditions of Insurance Policy and appellant-insurance company is not liable to make payment of any compensation and appeal be accepted and the appellant-insurance company be exempted from the liability to pay the amount of compensation.

7. While arguing this point learned counsel for the respondent Mr. Sagar Aggarwal, Advocate took the plea that 'The Tribunal' had rightly come to the conclusion that accident was caused due to rash and negligent driving of respondent No.1. The statement of PW-2 and PW-5 is to be taken into consideration as a whole. The matter was reported to the police immediately after the occurrence. The said findings do not call for any interference. As regards to the plea taken by learned counsel for the appellant that trolley was not insured and as such appellant-insurance company is not liable to make the payment of compensation. Learned counsel for respondent took the plea that trolley was attached with the gypsy and as such insurance company is liable to pay the compensation. On this point reliance was placed upon judgment from Division bench of this Court in **United India Insurance Co. Ltd. Vs. Pritpal Singh and others** **1996(2) RRR 335** wherein the Division Bench of this Court had taken the following view:

5.Definition of “motor vehicle” or “vehicle” is comprehensive so as to include any mechanically propelled vehicle adapted for use upon roads irrespective of the source of power and includes a trailer. “Trailer” has been defined separately but is also included in the definition of the “motor

vehicle/vehicle". Therefore, even though a trailer may be drawn by a motor vehicle, it by itself is a motor vehicle and both the tractor and the trailer taken together would constitute a transport vehicle. If the trailer/trolley is not driven by a tractor, it does not become a vehicle and does not have any independent identity. The very fact that the trailer has been included within the definition of "motor vehicle" clearly shows that the legislature did not intend to exclude a tractor together with a trailer/trolley from the definition of the "motor vehicle".

8. I have given considerable thought to the submissions having been made by learned counsels for both the parties. However the similar matter had gone before Hon'ble Apex Court in case **M/s Natwar Parikh & Co. Ltd. Vs. State of Karnataka & Others 2005 (4) RCR Civil 61** and Hon'ble Supreme Court observed that it is the use of the "motor vehicle" on the given occasion which determines the category of "motor vehicle", whether it is adapted for that purpose or not.

9. The definition of trailer, tractor, motor vehicle and transport vehicle and goods carrier have been defined under Section 2 of Motor Vehicle Act 1988 and for reference the same are being reproduced hereunder:

"Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under section 2(28). Similarly, the word "tractor" is defined in section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the

comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under section 2(47) of the M.V. Act, 1988."

10. Similar matter had also gone before this Court in case **The New India Assurance Company Limited Vs. Sohan Lal and ors. FAO No.72 of 1994 decided on 10.12.2012** and this Court was of the view that as there was insurance only for tractor and no insurance for the trailer. Absence of an insurance cover for the trailer was seen as directly involved in the accident, cannot make the insurer liable.

11. In view of the above, there is no dispute that if no part of the

tractor was involved in the accident but the trailer was involved in accident and caused injury to a person or death of any person the question of liability of an insurer would arise only if the trailer was also insured, for, i.e. to mean the risk caused by the trailer which was insured and only that makes that creates rights of indemnity to the owner of the tractor who had also availed of an insurance cover for the trailer attached to the tractor.

12. Quite identical are the facts of the case in hand because in this case Gurdeep Singh was driving the gypsy which was having trolley attached to the same. It has come in the statement of cross-examination of PW-2 that trolley attached with gypsy had hit against rear wheel of the tractor meaning thereby accident had taken place with trolley attached with the gypsy and no part of the gypsy had touched tractor. The gypsy bearing No.HR-45-A-7546 was owned by Sukhjinder Singh and the said gypsy was insured with appellant-insurance company. The accident had taken place with the trolley attached with the gypsy and the said trolley was not insured with the insurance company and no premium was paid to the insurance company. The vehicle was being driven in violation of the terms and conditions of the insurance policy and as such insurance company is not liable to pay the amount of compensation and if insurance company has paid the amount of compensation, the appellant insurance company is certainly entitled to recover the amount of compensation from the driver and owner.

13. In view of the above the present appeal filed by appellant-insurance company is accepted and the award dated 11.02.2014 passed by Motor Accident Claims Tribunal, Kaithal stands modified that appellant-insurance company is not liable to pay the amount of compensation and if the amount of compensation had already been paid by the appellant-

insurance company, the appellant-insurance company is entitled to recover the said amount from the driver and owner of the offending vehicle i.e. Gurdeep Singh-respondent No.5 and Sukhjinder Singh-respondent No.6 in the present appeal.

**(SHEKHER DHAWAN)
JUDGE**

March 31, 2015

msd